

witnesses as one of not “cramming” casinos “down the throats” of unwilling communities.<sup>399</sup>

While the evidence developed would not support a claim that the Hudson decision reflected application of a clear, long-standing DOI policy consistent with other cases, neither does the evidence establish that the reasons given for the Hudson decision are not reasons actually considered by DOI employees in reaching their decision.

There is evidence that this policy had been voiced by senior Interior officials prior to the consideration of the Hudson application. Even before Secretary Babbitt’s tenure, off-reservation gaming applications were viewed as difficult to approve, at least because of opposition by local communities and political leaders. The Department had, in 1986 and 1987, by policy statement and proposed rule, tried to effectively prohibit off-reservation gaming. In 1990, Babbitt’s predecessor, Secretary Lujan, centralized off-reservation gaming decisions in one office at BIA in Washington in an effort to provide for greater scrutiny of such applications.<sup>400</sup> Witnesses – including Babbitt, Collier, Duffy, Thornberry and Leshy – recounted that in 1993, early in his tenure as secretary, Babbitt drew a distinction between on- and off-reservation gaming.<sup>401</sup> According to Babbitt and his senior staff, he was at that time involved in a dispute with certain governors over Indian gaming compacts in Arizona. Some governors believed they had or should have the ability to limit on-reservation gaming to ceremonial games or bingo and were refusing to enter into compacts with tribes without such limitations. While Babbitt viewed the

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<sup>399</sup>See *e.g.*, Duffy G.J. Test., May 12, 1999, at 51.

<sup>400</sup>See *supra* at 42-43.

<sup>401</sup>Thornberry was the Executive Director of the National Governors’ Association at the time.